Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

JOHN B. BELL

Petitioner,

v.

STATE OF NEW YORK, CHEMICAL BANK and
CHASE MANHATTAN BANK, N.A.

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Second Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN B. BELL
Petitioner, Pro Se
3400 Foxcroft Road No. 115
Miramar, FL 33025
(954) 447-0217

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53 pp

QUESTION PRESENTED

Whether the Circuit Court's dismissal of petitioner's appeal sua sponte, on the ground that it was frivolous within the meaning of 28 U.S.C. §1915(d)(2)(B)(i), constituted an unacceptable deviation from the usual course of judicial proceedings, so as to call for an exercise of this Court's supervisory powers.

LIST OF PARTIES

All parties hereto appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, John B. Bell, respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeal for the Second Circuit.

OPINIONS BELOW

The Court of Appeals' opinion (2d Cir Oct. 16, 2001) is unreported and is reproduced in the Appendix at App.-1. The District Court's opinion (S.D.N.Y. Sept. 7, 2000) is unreported and is reproduced in the Appendix at App.-3. The Court of Appeals' Order (2d Cir. Feb. 21, 2002) is unreported and is reproduced in the Appendix at App.-17.

STATEMENT OF JURISDICTION

The Court of appeals decided my case on October 16, 2001 and the time in which to file a writ of certiorari was extended by the Honorable Justice Ginsburg, to and including July 22, 2002, on May 8, 2002 in Application No. 01A856.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 1, 14th Amend. U.S. Constitution.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. 42 U.S.C. §1983

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another,

for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. 42 U.S.C.§1985(3)

STATEMENT OF THE CASE

This is a Title VII action filed in the United States District Court, for the Southern District of New York, for violations of petitioner's constitutional rights to Due Process and the Equal Protection of the law, in a State Court action entitled Bell v. New York Higher Education Assistance Corporation, Chemical Bank and New York Law School, 138 Misc.2d 936, 526 N.Y.S.2d 319 (Sup.Ct. N.Y. Co. 1987) The State Court action against Chemical Bank (now Chase Manhattan Bank and hereinafter "Chase") was disposed of by the Court's initial Order, dated December 7, 1987 ("Decision"), granting Chase summary judgment dismissing the case on the ground that petitioner breached his Guaranteed Student Loan Contract, by failing to return to school within the time specified by 8 NYCRR 2104.4, (eff. 4-12-75 and repealed 9-11-96 and hereinafter "Rule").

I. The Unresolved Issues Presented In This Case

Subsequent thereto, petitioner moved pursuant to New York's Civil Practice Law and Rules ("hereinafter "CPLR"), §5015(a)(2) and (3), for the vacatur of the aforesaid Order, on the grounds that the Rule was unconstitutional because it was promulgated in excess of the rule-making authority granted New York State Higher

Education Services Corporation (New York Higher Education Assistance Corporation's successor and hereinafter "NYSHESC"), constituted an unlawful exercise of legislative power and had been unlawfully and retroactively applied ("Unresolved Issues"). The State Supreme Court *refused* to determine the Unresolved Issues and gave the Decision *res judicata* effect.

II. The District Court Dismissed The Complaint, Holding That It Lacked Jurisdiction To Hear The Case, Under The Rooker-Feldman Rule.

The District Court dismissed petitioner's complaint, *characterizing* it as a thinly disguised attempt by petitioner to seek federal review of a State court decision. However *inartfully* the complaint may have been drafted, it is clear enough to establish that petitioner is not seeking a review of anything the State Supreme Court *did*, but is complaining about what said Court *refused to do*. In the instant case, there is *no* state court decision adjudicating the Unresolved Issues.

Petitioner's Complaint sought the redress of grievances, based upon the denial of his constitutional rights. The historical background given the District Court to frame the circumstances in which these constitutional violations arose, was misconstrued by said Court as being the predicate upon which the case was based. However, incorporated into each Cause of Action by reference, are the allegations

contained ¶¶11, 12 and in the first ¶13 of the Complaint (inadvertently there are two ¶13s).

Paragraph 11 addresses petitioner's CPLR, §5015(a)(2) and (3) motion to vacate the Decisions, on the grounds that NYSHESC had repeatedly submitted perjurious affirmations, alleging that it was a State agency, in order gain and maintain the vacatur of petitioner's Jury Award against it. It further alleged that the summary judgment granted to Chase should be vacated because the provisions of the Rule had been unlawfully and retroactively applied.

In support of said motion, petitioner submitted a letter from State Senator Paterson's Office, advising petitioner that NYSHESC was not a State agency, but a Public Benefit Corporation and a copy Education Law, §216-a, which *statutorily* established that NYSHESC *was not* a State agency and was subject to New York's Not-For-Profit Corporation Law. As to Chase, petitioner submitted a copy of the Rule and a copy of his HE 700, which irrefutably established that the HE 700 was executed on *January 5, 1977* and that the Rule became effective on *April 12, 1977.*

Paragraph 12 of the Complaint addresses a subsequently filed §5015 motion seeking the same relief, on the same grounds. In support of that motion, petitioner submitted NYSHESC's Departmental Bill No. 388, in which it *admitted* that on *April 4, 1985* (more than two years *before*

the State Supreme Court's ruling, in an unpublished case) *the* New York Court of Claims *ruled* that NYSHESC *was not* a State agency. NYSHESC further admitted therein, that the said Court had taken that position *on a number of occasions*, "the last as recently *as September, 1986"*. These admissions were *corroborated* by the Attorney General of the State of New York, in comments sent to then Governor Mario Cuomo, in a letter dated July 11, 1990.

Petitioner further alleged therein, that the Rule was facially unconstitutional, because it was promulgated in violation of existing law (Education Law, §683[1]) and therefore, constituted an unlawful exercise of legislative power by NYSHESC. The State Supreme Court refused to adjudicate the aforesaid issues (hereinafter "Unresolved Issues"), giving the Decision res judicata effect.

Petitioner filed suit in the District Court under, inter alia, 42 U.S.C. §§1983 and 1985, alleging that his constitutional rights to Due Process and the Equal Protection of the Law were violated in the State Action, when Chase interfered with the adjudicatory functions of the State Supreme Court, by misrepresenting that the Decision constituted a final order and that the Unresolved Issues were therefore barred under the principles of *res judicata*.

The District Court dismissed the Complaint, characterizing it as a thinly disguised attempt by petitioner to obtain a federal review of a state decision, such review being prohibited under the Rooker-Feldman Rule. The District Court's *dicta*, at Footnote 7 of its Opinion, states:

> "Assuming arguendo that this Court were to find that it did have subject matter jurisdiction over plaintiff's claims, the claims as against NYS would be barred by the Eleventh Amendment *and the claims against Chemical and Chase would be precluded by the doctrine of res judicata.*". (App. at A-18.)

Petitioner appealed the District Court's dismissal of the Complaint. The Circuit Court, pursuant to 28 U.S.C. §1915(d)(2)(B)(i), dismissed the appeal *sua sponte*, finding that the appeal was frivolous. Petitioner now seeks a Writ of Certiorari to the Circuit Court, for the reinstatement of the appeal, so that the issues herein may be fully litigated.

REASONS FOR GRANTING THE PETITION

The record herein irrefutably establishes that the dismissal of the appeal, on the established facts and law, was inconsistent with, and deviated from, the usual course of judicial proceedings.

In the State Action, the State Supreme Court unlawfully gave the Decision *res judicata* effect and then agreed with Chase that the litigation of the Unresolved Issues was barred under the principles of res judicata. Chase knew, at the time it advanced this argument, that under New York State's Law of Res Judicata, there was no rational basis for such an argument.

I. Under New York State Law, CPLR, §5015 Permits A Litigant To Move To Vacate An Order Or Judgment, Where There Is A Change In Circumstances

New York State implemented the Civil Practice Law and Rules (hereinafter "CPLR"), specifically §5015 thereof which provides, in relevant part, as follows:

> **"Relief from Judgment or Order.**
> (a) On motion. *The court which rendered a judgment or order may relieve a party from it upon such terms as may be just*, on motion of any interested person with such notice as the court my direct upon the ground of:...".

CPLR, §5015, goes on to state that such relief may be granted for 1) excusable default, 2) newly discovered evidence, 3) fraud, misrepresentation or other misconduct of an adverse party, and 4) lack of jurisdiction and/or reversal, modification or vacatur of a prior judgment or order upon which it is based.

Petitioner's Unresolved Issues were raised by motions made pursuant to CPLR, §5015(a)(2) and (3). The State Supreme Court refused to decide the issues raised on said motions, holding that it constituted an attempt by petitioner *to start a second round of litigation of the issues it had initially determined.* The absence of an order deciding the Unresolved issues, is *prima facie evidence* that petitioner's claims cannot be *inextricably intertwined* with any state-court order or judgment. Chase's admissions, that these Unresolved Issues *were never adjudicated,* should have been dispositive of this issue. In its letter of February 2, 1999, responding to petitioner's request for a copy of the order adjudicating the Unresolved Issues, Chase states that:

> "...The orders you cannot "find", in which these matters were finally and legally determined, ***are in Justice Wilk's original decisions and the affirmations thereof.***" (emphases added)

Chase then goes on to demonstrate the fallacies in its arguments for res judicata treatment for the Decision , by exposing the lack of its compliance with the requirements of *res judicata*. It continues, stating that:

> "... Res judicata principles in New York establish that *these decisions resolve all legal bases you could or can ever have to contest the underlying student loan claims* supposedly arising in the 1970's, which you have attempted to relitigate for more than a decade. *Those decisions were final determinations of your claims*, whether or not they addressed any specific legal theories (which, of course, they could only do to the extent that you raised them). Your"constitutional" are simply another legal theory, *which you cannot raise once a final determination has been made*, as it was twelve years ago, on the underlying claim. ...".(Chase letter of. 2/2/99)(emphases added)

This latter portion of Chase's discourse is *patently absurd*. It had to have known, when it made these assertions, that they had no basis either in fact or in law. The most essential requirements for the invocation of defense of res judicata, are that the must be two separate proceedings, an identity of issue, and a final judgment on the merits. None of these essential element have been established.

II. Under New York State Law, Only A Valid Final Judgment Can Be Given Res Judicata Effect

CPLR,, §5015 debunked Chase's contention that the Decision was a "*final determinations of your claims*, whether or not they addressed any specific legal theories". Or that my "constitutional" [issues] were simply another legal theory, *which you cannot raise once a final determination has been made* ". Chase's arguments would hold water only in a subsequently brought proceeding, seeking to adjudicate the Unresolved Issues. Res Judicata specifically provides *that there must be two separate proceedings* between the identical parties or their privies, the claims sought to be barred must *have been determined in the prior proceeding*, and a valid final judgment on the merits entered. Chase has not bourne this burden of proof.

The Seventh Circuit, in *Williams v. Commissioner of Internal Revenue*, 1 F.3d 502 (C.A. 7th Cir. 1993), dealt with a similar issues. The plaintiffs argued that the Tax Court's initial ruling had *res judicata* effect. The Seventh Circuit disagreed and held that:

> "[4-5] The taxpayers' alternative suggestion, that the Tax Court's initial ruling had res judicata (they mean collateral estoppel) effect *is frivolous*. Only a final judgment has such effect. *G. & C. Merriam Co. v. Saalfield*, 241 U.S. 22, 28, 36 S.Ct. 447, 449, 60 L.Ed. 868 (1916); 18 Charles Alan

> Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedures, §4432 (1981). ...
>
> *There is no basis for using res judicata or collateral estoppel to prevent a judge from reconsidering an earlier ruling in the same on-going case.*" (id. P. 504)(emphases added.)

The Appellate Division, First Department, took a similar position in *Brown Avenue Realty Corp. v. Rubin*, 207 A.D.2D 263, 615 N.Y.S.2d 360 (A.D. 1st Dept. 1994), when it held that:

> "We agree with the Supreme Court that the plaintiff's claims are not barred by res judicata. Pursuant to the transactional analysis approach, which this State has adopted in deciding res judicata issues, '*once a claim is brought to a final conclusion*, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy. *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 68, 429 N.E.2d 1158; *see also Matter of Reilly v. Reid*, 45 N.Y.2d 24, 407 N.Y.S.2d 645, 379 N.E.2d 172). The doctrine bars not only claims that were actually litigated but also claims that could have been litigated (*Nottenberg v. Walber 985 Co.*, 160 A.D.2d 574, 575, 554 N.Y.S.2d 217). *The previous*

> *disposition must have been on the merits and the party opposing preclusion must have had a full and fair opportunity to litigate his claim in the prior proceeding (see, Schwartz v. Public Administrator*, 24 N.Y.2d 65, 298 N.Y.S.2d 955, 246 N.E.2d 725; *Murray v. National Broadcasting Co.*, 178 A.D.2d 157, 576 N.Y.S.2d 578, appeal dismissed 79 N.Y.2d 1-36, 584 N.Y.S.2d 442, 594 N.E.2d 936; *Brugman v. City of New York*, 102 A.D.2d 413, 477 N.Y.S.2d 636, affd. 64 N.Y.2d 1011, 489 N.Y.S.2d 54, 478 N.E.2d 195." (id. p.)(emphases added)

The fact therein should have precluded the entry of the injunction enjoining petitioner from further litigating, on the ground that such litigation was barred under the principles of *res judicata*.

II. Under New York State Law, Only A Final Judgment May Be Given Res Judicata Effect

Additionally, as indicated hereinabove, under New York State law, only a final valid judgment may be given res judicata effect. Contrary to Chase's assertions, the Decision is not such a judgment, since it did not decide all the issues in the case. The New York State Court of Appeals defines what constitutes a final order, in *Burke v. Crosson*, 85 N.Y.2d 10, 623 N.Y.S.2d 534, 647 N.E.2d 736 on remand 213 A.D.2d

963, 623 N.Y.S.2d 969 app. and rearg. den. 1995 WL 350085, thus:

> "[1] The concept of finality is a complex one that cannot be exhaustively defined in a single phrase, sentence or writing (see generally Cohen and Karger, Powers of the New York Court of Appeals, §9, at 39; Scheinkman, The Civil Jurisdiction of the Court of Appeals: The Rule and Role of Finality, 54 St. John's L. Rev. 443). Nonetheless, a fair working definition of the concept can be stated as follows: a final order or judgment is *one that disposes of all of the causes of action between the parties in the action or proceeding* and leaves nothing for further judicial action apart from mere ministerial matters (see generally Cohen and Karger, op. Cit. §§10, 11).

The Decision, *admittedly*, did not adjudicate the Unresolved Issues raised and therefore, by definition, is not a final Order. Since only valid final judgments, on the merits, can raise the bar or res judicata, then it is further evident that the Decision could not be used to raise a bar of *res judicata* to bar further litigation therein and most assuredly, cannot be raised to preclude the litigation herein..

III. The Circuit Court's Dismissal Of Petitioner's Appeal, Pursuant To 28 U.S.C. §1915(d)(2)(B)(i), Flies In The Face Of The Facts That Are Contained In the Record

I. The Rooker-Feldman Rule Is Not Applicable

The Rooker-Feldman Rule was never intended to extinguish constitutional rights, where federal law specifically states that they exist. In *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 20-21 (1986), Justices Blackmun, Brennan, Marshall, O'Connor, Scalia and Stevens, all joined in concurring opinions that rejected Pennzoil's contention that Texaco's federal suit was barred under the Rooker-Feldman Rule.

In his concurring opinion, Justice Scalia (joined therein by Justice O'Connor), wrote:

> "I join the opinion of the Court. I write separately only to indicate that I do not believe that the so-called *Rooker-Feldman* doctrine deprives the Court of jurisdiction to decide Texaco's challenge to the constitutionality of the Texas stay and lien provisions. In resolving the challenge, the Court need not decide any issue either actually litigated in the Texas courts or inextricably intertwined with the issues so litigated. Under these circumstances, I see no jurisdictional bar to the Court's decision in this case." (Id. p. 18)

Justice Brennan, in his concurring opinion (joined therein by Justice Marshall), wrote:

> "... Texaco filed this §1983 suit claiming only the violations of federal statutory and constitutional law. *In enacting §1983, Congress 'created a specific and unique remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding.'. Mitchum v. Foster*, supra, at 237. ...
>
> Furthermore, I reject Pennzoil's contention that *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), forbids collateral review in this instance. In *Rooker* and *Feldman*, the Court held that lower federal courts lack jurisdiction to engage in appellate review of state-court determinations. *In this case, however, Texaco filed the §1983 action only to protect its federal constitutional rights to a meaningful opportunity for appellate review, not to challenge the merits of the Texas suit.* Texaco's ~~federal~~ action seeking a stay of judgment pending appeal is therefore an action 'separable from and collateral to' the merits of the state-court judgment. *National Socialist Party v. Skokie*, 432 U.S.43, 44 (1977) (quoting *Cohen v. Beneficial Loan*

> *Corp.*, 337 U.S. 541-546 (1949)." (Id. p. 20-21)(emphases added)

Justice Marshall, in his concurring opinion, summed up this issue upon which the District Court dismissed the action originally, by restating the underlying principle of *Rooker-Feldman*, thus:

> "As we have said, "[i]f the constitutional claims presented to a United States district court are inextricably intertwined" with the merits of a judgment rendered in state court, "then the district court is in essence being called upon to review the state-court decision. This the district court may not do." District of *Columbia Court of Appeals v. Feldman*, *supra*, at 483-484, n. 16. While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that *the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it*." (Id. p. 25)(emphases added)

It is respectfully contended that the Circuit Court's dismissal of petitioner's appeal, pursuant to 28 U.S.C. § 1915(d), flies in the face of the facts and law contained in the record. 28 U.S.C. §1915(d) authorizes an

appeal court to dismiss an appeal, only when legal theory, or the factual contention therein *lacks an arguable basis.* In Neitzke v. Williams, 490 U.S. 319 (1989), this Court unanimously stated that the frivolousness standard under §1915(d) is met, "*only if the petitioner cannot make any rational argument in law or fact.*". (citing, *Estelle v. Gamble*, 429 U.S. 273 (1976); *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) and *Jones v. Alfred Mayer Co.*, 392 U.S. 409 [1968].)

In those cases, this Court concluded that it could hardly be said that the substantial legal claims raised therein were so defective, that they should never have been brought at the outset. It further concluded that to term such claims as frivolous, would distort measurably the meaning of frivolousness both in common and legal parlance.

The case at bar, not unlike those referenced above, raises substantial claims under federal statutory and constitutional law. The *prima facie* evidence adduced herein, irrefutably establishes that the instant action is not frivolous within the meaning of 28 U.S.C. §1915(d) and that the Circuit Court's action, in dismissing same, constituted an unacceptable deviations from the usual course of judicial proceedings, so as to call for an exercise of this Court's supervisory power.

CONCLUSION

Predicated upon the foregoing arguments, petitioner respectfully contends the record herein establishes that the instant case contains meritorious claims under both federal statutory and constitutional law. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: 7/20/02

S.D.N.Y.
99CV5809
Schwartz, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for The Second Circuit, held in the United States Courthouse, Foley Square, in the City of New York, on the 16th day of Oct. Two Thousand One

Present:
Hon. Jon O. Newman,
Hon. Amalya L. Kearse,
Circuit Judges,
Hon. Gregory W. Carman,
Chief Judge, Court of Int'l Trade

John B. Bell,
Plaintiff-Appellant,

v.

State of New York, et al.,
Defendants-Appellees

SEAL
00-9311 U.S. Court of Appeals]
Filed Oct 16 2001
[Second Circuit]

Appellees have moved to dismiss the appeal and to stay the briefing schedule. Upon consideration of the motion, appellant's opposition to the motion, and the appellant's brief on appeal, it is hereby ORDERED that the motion to dismiss be and it is hereby granted pursuant to 28 U.S.C. § 1915 (d) (2) (B) (i) ("Notwithstanding any filing fee, or any portion thereof, that my have been paid, the court shall dismiss the case at any time if the court determines that ... the action or

appeal... is frivolous or malicious ...."); see, e.g., Pillay v. INS, 45 F.3d 14, 17(2d Cir. 1995) (court of appeals has inherent power to dismiss an appeal on the ground that it is frivolous when "no arguably meritorious issue" is presented for review, even if the appellant has paid the requisite appellate filing fees).

Appellees' motion to stay the briefing schedule is denied as moot.

THE MANDATE, CONSISTING OF ITEMS ELOW HAS BEEN RECEIVED,
( ) OPINION
( ) STATEMENTOF COSTS
( ) ORDER

FOR THE COURT
ROSEANN B. MacKECHNIE,
By:_____/S/_____
LUCILLE CARR

Received by: R.M. Date: 10/24/01
RETURN TO CIVIL TEAM

Oct 16 2001

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JOHN B. BELL

Plaintiff,

-against-

OPINION AND ORDER

THE STATE OF NEW YORK, CHEMICAL BANK and CHASE MANHATTAN BANK, N.A.

99 CIV. 5809 (AGS)

Defendants.

----------x

ALLEN G. SCHWARTZ, DISTRICT JUDGE:

Plaintiff John B. Bell, proceeding pro se, brings this action pursuant to, inter alia, 42 U.S.C. § 1983, alleging violations of his constitutional right to due process and equal protection. Before the Court is (i) defendant State of New York's[1] ("NYS") motion to dismiss the complaint in its

[1] On a motion to dismiss pursuant to Fed. R. Civ. P. 12 (b)(1), "a court must accept as true all material factual allegations in the complaint." Atlantic Mut. Ins. Co. v. Balfour MacLaine Intel Ltd., 968 F.2d 196, 198 (2d Cir. 1992). "In deciding the motion the Court may consider documents referenced in the complaint and documents that are in plaintiff's possession or that the plaintiff knew of and relied on in bringing suit." Bal v. NYC Loft Board, No. 00 Civ. 1112 (JGK) 2000 WL 890199,, *2 (Jul. 5, 2000) (Koeltl, J.). Additionally, in considering a motion to dismiss "it is proper to consider public documents ... to determine whether claims are barred by prior litigation." Bal, 2000 WL 890199, *2. Accordingly, the facts discussed herein are accepted as true

entirety pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 12(b)(1) and 12(b)(6); (ii) defendant Chase Manhattan Bank, N.A. ("Chase") motion to dismiss the complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment as against Chase nad defendant chemical Bank (Chemical") pursuant to Fed. R. Civ. P. 56. For the following reasons, defendants' motion to dismiss the complaint is GRANTED and the plaintiff's cross-motion is DENIED.

BACKGROUND

A. Factual Background

Plaintiff is a former law student who obtained a student loan and then failed to discharge that debt. Defendants are (i) NYS; (ii) Chemical, from whom plaintiff obtained the student loan; and (iii) Chase, which has acquired Chemical and is now the real party in interest. (Complaint ¶¶ 3, 4.) This action arises out of a protracted dispute concerning whether Chemical submitted plaintiff's student loan to the New York Higher Education Assistance Corporation ("NYHEAC") for payment prematurely.

In fall 1975, plaintiff commenced his studies at New York Law School and borrowed monies from Chemical in

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for the purposes of this motion and are drawn from the allegations of the complaint or are otherwise reflected in the record.

order to finance his education. (State Court Complaint ¶¶ 8, 9 att. To Pl's App. Exhs.) In 1977, plaintiff took a leave of absence from law school.[2] When Chemical became aware that the promissory notes had matured and, when plaintiff failed to remit monies to discharge the debt, Chemical submitted the loan to NYHEAC for payment. (State Court Complaint ¶¶ 15, 16 att. To Pl's App. Exhs.)

In 1983, plaintiff, proceeding pro se, filed suit in New York State Supreme Court against NYHEAC, Chemical, and New York Law School alleging, inter alia, breach of contract. York State Supreme Court against NYHEAC, Chemical, and (Complaint ¶ 6.) Plaintiff contended that Chemical had submitted the loan to NYHEAC prematurely and wrongfully demanded repayment. The New York State Supreme Court dismissed the claims against New York Law School as time-barred. (Complaint ¶ 13.) On July 24, 1985, while plaintiff's state court action was still pending, plaintiff filed suit in federal court in the Southern District of New York against, inter alia, NYS and New York Law School. Plaintiff asserted claims under 42 U.S.C. §§ 1983, 1985, alleging that defendants had violated his constitutional right to due process by making fraudulent representations in state court concerning the applicability of the statute of limitations.

---

[2] Plaintiff never completed his coursework and, ultimately, failed to graduate

Judge Vincent L. Broderick dismissed the complaint, reasoning, inter alia, that plaintiff was impermissibly asking a federal court to review a state court judgment. See Bell v. State of New York, No. 85 Civ. 5639, at 14-19. The Second Circuit, affirming Judge Broderick's dismissal of the complaint, characterized plaintiff's arguments on appeal as being "the same frivolous points ... that he addressed in the district court." Bell v. State of New York, No. 85 Civ. 7893 (2d Cir. Mar. 23, 1986) (unpublished).

In 1987, a brace of decisions issued with respect to plaintiff's pending state court action. The New York State Supreme Court dismissed plaintiff's claims against NYHEAC for lack of subject matter jurisdiction, see Bell v. NYHEAC, 526 N.Y.S.2d 316 (Sup. Ct. 1987), reh'g denied, 533 N.Y.S.2d 642 (Sup. Ct. 1988), and granted Chemical summary judgment against plaintiff, see Bell v. NYHEAC, 526 N.Y.S.2d 319 (Sup. Ct. 1987). Plaintiff appealed to the Appellate Division and the New York Court of Appeals, to no avail. See, e.g., Bell v. NYHEAC, 526 N.Y.S.2d 316 (App. Div. 1987) (affirming grant of summary judgment to Chemical) appeal dismissed in part denied in part 541 N.Y.S.2d 979 (1989); Bell v. NYHEAC, 533 N.Y.S.2d 642 (App. Div. 1988) (affirming dismissal for lack of subject matter jurisdiction) appeal dismissed 537 N.Y.S.2d 493 (1989) appeal denied 541 N.Y.S.2d 984 (1989) reargument

denied 543 N.Y.S.2d 401 (1989); Bell v. NYHEAC, 538 N.Y.S.2d 451 (App. Div. 1988) (affirming denial of rehearing on dismissal for lack of jurisdiction) appeal dismissed in part, denied in part 541 N.Y.S.2d 979 (1989).

Despite having exhausted his appeals, plaintiff nevertheless continued to litigate. In 1989, the New York State Supreme Court (i) denied plaintiff's motions for recusal and for an order to deem the court's earlier decisions abandoned and (ii) enjoined plaintiff from making further motion without the court's permission. The Appellate Division unanimously affirmed, stating that "in light of plaintiff's palpable abuse of the judicial process, the court was well within its discretion in requiring that plaintiff obtain the court's permission before making any further motions." Bell v. NYHEAC, 560 N.Y.S.2d 439,, 440 (App. Div. 1990)[3] Dismissing plaintiff's motion for leave to appeal, the New York Court of Appeals imposed sanctions on plaintiff, referring to plaintiff's "abuse of judicial process" and to the fact that "this is the fifth motion in a chain reflecting a strategy of dilatory, frivolous avoidance of a twenty-year old student loan debt for two years' law school education". Bell v. NYHEAC, 563 N.Y.S.2d 54, 54 (1990), reargument

[3] Additionally, the Appellate Division unanimously affirmed a New York State Supreme Court decision denying plaintiff's motion for reargument. See Bell v. NYHESC, 550 N.Y.S.2d 712 (App. Div. 1990), appeal dismissed 560 N.Y.S.2d 129 (1990)

denied, 565 N.Y.S.D. 764 (1990). Following these adverse decisions, plaintiff spent several years unsuccessfully petitioning the state courts for permission to file motions. (Complaint ¶¶ 11, 12 13.)

In 1997, the New York State Supreme Court (i) granted Chemical's motion to permanently enjoin plaintiff from commencing or reinstituting further litigation relating to his studen; and (ii) denied plaintiff's cross-motion for, inter alia, vacatur of the decisions dismissing NYHEAC from the action and granting summary judgment to Chemical, which had been rendered a decade earlier. The Appellate Division unanimously affirmed, finding that "plaintiff's claims are barred by the doctrine of res judicata" and that it was appropriate to enjoin plaintiff from further litigation relating to his student loans "in view of plaintiff's dilatory and frivolous tactics over the long history of this litigation". Bell v. NYHEAC, 671 N.Y.S.2d 975, 975-76 (App. Div. 1998), appeal dismissed, 677 N.Y.S.2d 783 (1999), appeal and leave to appeal dismissed, 691 N.Y.S.2d 384 (1999).

B. Procedural History

On July 21, 1999, approximately two months after the New York Court of Appeals dismissed plaintiff's final appeal of the order permanently enjoining him from commencing further litigation, plaintiff filed the instant action. Plaintiff

asserts claims under, inter alia, 42 U.S.C. § 1983, alleging violations of his constitutional right to due process and equal protection. Specifically, in claim one plaintiff alleges that his right to due process and equal protection was violated when NYS, in order to unlawfully influence the state court's adjudication of plaintiff's claims, deliberately and disingenuously failed to respond to certain of plaintiff's arguments. In claims two through fifteen, plaintiff alleges that his right to equal protection was violated by certain fraudulent and unlawful contentions that Chemical and Chase advanced in order to interfere with the adjudicatory function of the state courts. Plaintiff seeks $49 million in damages and a determination as to whether a certain regulation, 8 N.Y.C.R.R. § 2104.4, which has been repealed, was constitutional when it was in effect.

On October 29, 1999, defendants filed the instant motion to dismiss under Fed. R. Civ. P. 12 or, in the alternative, for summary judgment under Fed. R. Civ. P. 56, and plaintiff filed a cross-motion for partial summary judgment.

DISCUSSION

I. LEGAL STANDARD GOVERNING MOTION TO DISMISS PURSUANT TO 12 (b)(1)

In considering a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), "a court must accept as true all material factual allegations in the complaint." Atlantic Mut., 968 F.2d at 198; see Hernandez v. City of New York, No. 98 Civ. 7237 (AGS) 2000 WL 145749, *1 (S.D.N.Y. Feb 7, 2000). However, argumentative inferences favorable to the party asserting jurisdiction should not be drawn." Atlantic Mut., 968 F.2d at 1989; see Hernandez, 2000 WL 145749, *1. Where, as here, the plaintiff is proceeding pro se, courts must apply a "more flexible standard in determining the sufficiency of [the] complaint that they would in reviewing a pleading submitted by counsel." Platsky v. CIA, 953 F.3d 26, 28 (2d Cir. 1991) (per curiam); see Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION PURSUANT TO THE ROOKER-FELDMAN DOCTRINE

NYS moves to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1), alleging that the Court lacks subject matter jurisdiction under, inter alia, the Rooker-Feldman Doctrine.[4] "Under the Rooker-Feldman doctrine, a federal

[4] It is unclear whether Chase and Chemical join in NYS's motion to request dismissal pursuant to Fed. R. Civ. P. 12(b)(1) under such doctrine. However, subject matter jurisdiction may be raised by a court

district court does not have subject matter jurisdiction over [an action] that seeks to review a state court decision." Bal, *3; see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) (holding that the U.S. Supreme Court is the only federal court that can entertain a direct appeal from a state court judgment); Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996); cf. 28 U.S.C. § 1257.[5] The Supreme Court has stated that even where a state court judgment is not being appealed directly, "the District Court is in essence being called upon to review the state court decision" where "claims presented to a United States District Court are inextricably intertwined with the

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sua sponte. See FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) (stating that a court has an independent duty to examine the basis for jurisdiction); Genter v. Shulman, 55 F.3d 87, 89 (2d Cir. 1995) (stating that a challenge to subject matter jurisdiction may be raised at any time by either party or sua sponte by the court); Hernandez, 2000 WL 145749, *1 (same). Accordingly, regardless of whether Chase and Chemical join in NYS's motion, the Court must examine whether it has jurisdiction over the claims asserted against each of the defendants, not only those claims asserted against NYS. Cf. Dockery v. Cullen & Dykman, 90 F. Supp.2d 233, 237 (E.D.N.Y. 2000) (dismissing action as to all defendants, even non-moving defendants, on the ground that Rooker-Feldman doctrine was a jurisdictional doctrine that could be invoked by the court sua sponte).

[5] Federal district courts may review final state court decisions in certain exceptional instances, for example, if a federal statute so provides. See, e.g., 28 U.S.C. § 2254 (governing petitions for writs of habeas corpus); cf. Saint-Fleur v. City of New York, No 99 Civ. 10433 (WHP), 2000 WL 280328, *6 (S.D.N.Y. Mar. 14, 2000). However, such exceptions are inapplicable here.

state court's [determination]." Feldman, 460 U.S. at 483 n. 15 (citations omitted) (emphasis added).

A federal claim is "inextricably intertwined" with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring); accord Dockery, 90 F. Supp.2d 236; cf. Hachamovitch v. Debuono, 159 F.3d 687, 693 (2d Cir. 1998) ("The Rooker-Feldman doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the reversal or modification of a state court judgment.") "[E]ven if the state court judgment was wrongfully procured, it is effective and conclusive until it is modified or reversed in the appropriate State appellate or collateral proceeding." Dockery 90 F. Supp.2d 236 (quoting Simpson v. Putnam County Nat'l Bank, 20 F. Supp.2d 630, 633 (S.D.N.Y. 1998) (citation omitted)); see Mcallan v. Malatzky, No 97 Civ. 8291 (JGK) 1998 WL 24369, *2 (Jan. 22, 1998) (stating that "even though the [state court] judgment may rest on an erroneous resolution of constitutional federal law issues", a district court has no jurisdiction to review and reverse it) (Citations omitted) aff'd 1999 WL 146300 (2d Cir. 1999) (unpublished) Therefore, "the fact that the plaintiff alleges [in federal court] that the

State court judgment was procured fraudulently does not remove his claims from the ambit of Rooker-Feldman." Dockery, 90 F. Supp.2d at 236 (quoting Smith v. Weinberger, 994 F. Supp 418, 424 (E.D.N.Y. 1998) (emphasis added); see also Johnson v. The Smithsonian Institute, 189 F.3d 180, 186 (2d Cir. 1999) ("This court has never recognized a blanket fraud exception to Rooker-Feldman.").

Here, plaintiff's claims are "inextricably intertwined" with the state court judgment because the essence of plaintiff's claim is that the state court judgment was "procured fraudulently". *Dockery*, 90 F. Supp2d at 236. The claims allege that the defendants have "willfully and unlawfully interfered with the adjudicatory function of the state courts" by advancing or failing to advance certain contentions in the state court proceedings. (See, e.g., Complaint ¶¶ 18, 20.) Specifically, the first claim alleges that NYS unlawfully interfered with the state court adjudication by deliberately and disingenuously failing to address plaintiff's constitutional challenge concerning a certain regulation that allegedly was pivotal to determining whether summary judgment should have been granted to Chemical. (Complaint ¶¶ 15, 16; Pl's Mem. Law Opp. State's Mot. At 1.) Other claims allege that Chemical unlawfully interfered with the state court adjudication by deliberately

advancing misleading contentions concerning the applicability of 8 N.Y.C.R.R. § 2104.4 and the relationship between a certain document, HE 700, and the promissory note at issue. Additional claims allege that Chase unlawfully interfered with the state court adjudication by (i) adopting, as Chemical's successor, Chemical's fraudulent contentions; and (ii) colluding with the Attorney General in inaccurately contending that the doctrine of res judicata was applicable. Plaintiff, in alleging that defendants misleadingly remained silent or fraudulently advanced certain arguments with the intent of unlawfully interfering with state court adjudication, implicitly asks this court, in contravention of the Rooker-Feldman doctrine, to reverse the state court's judgment. See Drew v. Chase Manhattan Bank, No. 95 Civ. 3133 (JGK), 1998 WL 430549, *6 (S.D.N.Y. Jul. 30, 1998) (Koeltl, J.) (Moreover, the plaintiff's allegation that the second state court foreclosure judgment was procured by fraud ... was merely a thinly veiled effort to invalidate a State Court foreclosure judgment, in contravention of Rooker-Feldman.") (citing Smith, 994 F.2d at 424) (internal quotations marks omitted); cf. Simpson, 20 F. Supp.2d 630 (finding that, where addressing the claim would require that the court revisit the state court's foreclosure judgment and declare that judgment invalid on account of fraud, the court lacked jurisdiction). Consequently, plaintiff's claims alleging that the state court

judgments were wrongfully procured are barred by the Rooker-Feldman doctrine. See Zipper v. Todd, No. 96 Civ. 5198, 1997 WL 181044, at *6 (S.D.N.Y. 1997) (finding that the court lacked jurisdiction to decide a claim that alleged that the defendant had obtained the state court's approval for a liquidation by perpetrating a fraud); Levitin v. Homburger, 932 F. Supp. 508, 518-19 (S.D.N.Y. 1996) (finding that the court was without jurisdiction to decide a claim that alleged that a defendant had obtained a foreclosure judgment from the state court by perpetrating a fraud), aff'd, 107 F.3d 3 (2d Cir. 1977).[6]

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[6] The Court notes that in plaintiff's section 1983 suit before Judge Broderick 15 years ago, discussed supra, plaintiff asserted precisely the same type of allegation that it asserts in the instant action: that the state court judgment was fraudulently obtained. Judge Broderick dismissed the complaint on the grounds, inter alia, that plaintiff was impermissibly attempting to transform the federal district court into an appellate court reviwing allegedly fraudulently obtained state court judgments.

Judge Broderick dismissed the complaint for reasons stated on the record at a hearing on October 17, 1985. See Bell v. State of New York, No. 85 Civ. 5693 (VLB) (S.D.N.Y. Oct. 22, 1985). At the October 17, 1985 hearing, Judge Broderick stated in pertinent part:

What is involved here shortly and simply is that the plaintiff asserted legal claims in the state, he lost those legal claims, and now asserts the fact that he lost those legal claims constituted action by the State of New York depriving him of due process and of equal protection. No matter how it is couched, what plaintiff is seeking is to use the civil rights laws to constitute this court a Court of Appeals over what the state court has done.

With respect to the claims against the New York Law School ... plaintiff alleges a series of conspiracies, some 13 different conspiracies ... to commit a fraud on the state court by arguing ... that

Further, the fact that plaintiff alleges that his civil rights have been violated is insufficient to shield a claim from Rooker-Feldman where plaintiff is in actuality seeking review of a state court judgment. See Brooks-Jones v. Jones, 916 F. supp. 280, 281 (S.D.N.Y. 1996) ("A plaintiff also may not seek a reversal of a state court judgment simply by casting [her] complaint in the form of a civil rights action.") cf. Anderson v. Bowen, 881 F.2d 1, 5 (2d Cir. 1989) (stateing that constitutional claim is insufficient to confer jurisdiction where such a claim appears to be a state court claim "recloaked in constitutional garb"). A section 1983 claims seeks review of a state court judgment where, as here, the alleged constitutional violation arise out of the state court proceeding. This is because addressing such violations necessarily requires that the district court review the validity of the state court judgment. See Drew, 1998 WL 430459, *5 (finding that a section 1983 claim alleging due process violations was barred where plaintiff alleged that violations stemmed from fraudulent representations made by defendants in a state court proceeding, reasoning that "to remedy

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the plaintiff's claims were extinguished by the statute of limitations ... Here again, the plaintiff lost a legal action in the state; he appealed; the result in the trial court, in Special Term Part 1, was affirmed on appeal; and so now he is attempting to try the matter again in this court. ... Plaintiff is purely and simply a disappointed litigant.
(Transcript of Hearing, dated October 17, 1985, No. 85 Civ. 5639, at 14-19) (emphasis added). For the same reasons, this action must likewise be dismissed.

[plaintiff's] injuries, this court would be required to review that judgment or to readjudicate [plaintiff's] claim that defendants miscalculated and misapplied her mortgage payments."): Mcallan, 1998 WL 243269, *3 (finding that a section 1983 claim alleging due process violations was barred where plaintiff alleged that the violations stemmed from unconstitutional state court procedures, reasoning that addressing the claim would necessarily require reviewing the validity of the "erroneous" state court judgments). An additional indication that a section 1983 claim is in actuality a disguised attempt to seek review of a state court judgment is where it is apparent that the purpose of plaintiff's constitutional challenge is the invalidation of the state court judgment at issue. See Mcallan, 1998 WL 243269, *3 (finding that section 1983 claims alleging Fourteenth Amendment violation based on allegedly unconstitutional court procedures were in actuality "a disguised attempt to seek review of a state court adjudication" where it was "apparent that the purpose of plaintiff's challenge to the state court procedure [w]as to invalidate the state judgment in his case.") (citations omitted). Here, plaintiff's years of appeals and relitigation in the state courts have been directed at reversing the state court's judgments in favor of defendants. Plaintiff's purpose in filing in federal court, after having been permanently enjoined from doing so again in state court, is

clearly to obtain that reversal. Because plaintiff's allegation of civil rights violation "merely attest to plaintiff's dissatisfaction with the course of his litigation has taken in the state courts", the allegations are insufficient to confer Broadmoor Assoc., No. 94 Civ. 0613, 3-4 (S.D.N.Y. Feb.2, 1994)). Accordingly plaintiff's complaint must be dismissed in its entirety for lack of subject matter jurisdiction.[7]

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[7] Assuming arguendo that this Court were to find that it did have subject matter jurisdiction over plaintiff's claims as against NYS would be barred by the Eleventh Amendment and the claims against Chemical Bank and Chase would be precluded by the doctrine of res judicata. "The Eleventh Amendment bars from federal court all § 1983 suits brought by citizens against unconsenting states and agencies of such states." Mcallan, 1998 WL 24369, *4; see Quern v. Jordan, 440 U.S. 332 (1979); Ying Jing Gan v. City of New York, 996 F.2d 522, 529 (2d Cir. 1996); jurisdiction. Mcallan, 1998 WL 243269, *2 (quoting Chiania v. see also Santiago v. New York State Dep't. of Correctional Servs., 945 F.2d 25, 31 (2d Cir. 1991) (finding that Eleventh Amendment also bars actions under § 1985). Here, plaintiff asserts a section 1983 claim against NYS. Because NYS has not consented to suit by the plaintiff in this case, NYS has not waived its constitutional protection under the Eleventh Amendment. Consequently, plaintiff's claim against NYS would be barred.

Plaintiff claims against Chemical and Chase would be precluded by the doctrine of res judicata. The doctrine of res judicata provides that "a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in the action." Federated Dep't. Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981); Maharaj v. Bank America Corp., 128 F.3d 94, 97 (2d Cir. 1997); see 28 U.S.C. § 1738 (applying full faith and credit to state court judgments). Because New York is the state in which the original action was filed, the Court must apply New York's preclusion rule, which states: "If claims arise out of the same factual grouping, they are deemed to be part of the same cause of action and the later claim will be barred without regard to whether it is based upon different legal theories or seeks different or additional relief." Bal, 2000 WL 890199, *3. Here, there was a final judgment on the merits in state court on the claims against Chemical. Chemical was awarded summary judgment and plaintiff

In dismissing this action, the Court notes that "one of the collateral consequences of having two sets of courts is the problem posed by litigants who, in the words of judges who must deal with them, 'refuse to accept adverse decisions,' Homola v. McNamara, 59 F.3d 647, 651 (7th Cir. 1995), and 'repeatedly' subject the courts to 'vexatious and unmeritorious litigation,' Fariello v. Campbell, 860 F. Supp. 54, 58 (E.D.N.Y. 1994)." Suzana Sherry, Judicial Federalism in the Trenches; The Rooker-Feldman Doctrine in Action, 74 Notre Dame L. Rev. 1085, 1086 (1999). Plaintiff has litigated for seventeen years in state and federal courts concerning his twenty-five-year-old student loan debt. The slew of persistently adverse decisions that has resulted do not, as plaintiff contends, establish the venality of his opponents, the collusion of the Attorney General's office, or

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meticulously exhausted all of his appeals. Additionally, it is undisputed that Chase, which acquired Chemical and is Chemical's successor in interest, is Chemical's privy. Plaintiff is precluded from asserting any claims in this action against Chemical or its privy Chase that were or could have been raised in the state court action. Plaintiff's claims against Chemical and chase concern the constitutionality of 8 N.Y.C.R.R. § 2104.4, the applicability of form HE 700, and the validity of Chemical's and Chase's arguments pertaining thereto. All of these contentions were raised or could have been raised before the New York State Supreme Court in 1987. Plaintiff presents no legal support for a contrary conclusion. Finally, plaintiff's claims in this action arise out of the same factual grouping, specifically, the dispute surrounding the repayment of plaintiff's 1975 student loan. Consequently, assuming arguendo that the Court were to have subject matter jurisdiction over plaintiff's claims against Chase and Chemical, such claims would be precluded under the doctrine of res judicata.

the contumacious obtuseness of the judiciary, but rather evinces the meritlessness of plaintiff's claim and the frivolity of plaintiff's repeated applications for relief.

III. CHASE'S MOTION PURSUANT TO RULE 12(b)(6) AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Chase moves for dismissal of the complaint under Fed. R. Civ. P. 12(b)(6), or in the alternative, for summary judgment under Fed. R. Civ. P. 56, and plaintiff cross-moves for partial summary judgment under Fed. R. Civ. P. 56. The Court having dismissed the complaint in its entirety for lack of subject matter jurisdiction under the Rooker-Feldman doctrine, denies these motion as moot.

CONCLUSION

For the foregoing reasons, NYS's motion to dismiss the complaint is GRANTED. Chase's motion to dismiss under Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment and plaintiff's cross-motion for partial summary judgment are DENIED as moot. The Clerk of the Court is directed to close the file in this action.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

BELL

V. Docket No. 00-9311

STATE OF NEW YORK

SEAL
[U.S. Court of Appeals]
Filed Feb 21 2002
[Second Circuit]

Movant:

John B. Bell
3400 Foxcroft Road #115
Miramar, FL 33025

	Yes	No
Consent sought from adversary (ies)?	____	____
Consent obtained from adversary (ies)?	____	____
Is oral argument desired?	____	____

ORDER

Before: Hon. Jon O. Newman, Hon. Amalya L. Kearse, Circuit Judges, Hon. Gregory W. Carman*, USCIT

IT IS HEREBY ORDERED that the renewed motion for modification of court's order be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
By

Feb 21 2002
Date

/S/
Arthur M. Heller
Administrative Attorney

* Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

At IAS Part 6 of the Supreme Court of the State of New York, County of New York, held at the New York County Courthouse, 60 Centre St., on the 25 day of August, 1997

PRESENT:

HONORABLE ELLIOTT WILK, Justice

John B. Bell,

Plaintiff, : Index No. 28103/83

-against- : Order

NEW YORK HIGHER EDUCATION Assistance CORPORATION, CHEMICAL BANK and NEW YORK LAW SCHOOL,

Defendants.

The Chase Manhattan Bank, formerly know as Chemical Bank ("Chemical"), having moved for an Order permanently enjoining plaintiff John B. Bell ("Bell") from any further relitigation of this matter; and Bell having cross-moved to vacate this Court's orders dated December 4 and 7, 1987 granting summary judgment in favor, respectively, of defendants New York State Higher Education Services Corporation ("NYSHESC") and Chemical, which orders were affirmed by the Supreme Court, Appellate Division,

First Department, respectively, on November 10, 1988 and December 13, 1988; and the Court of Appeals having dismissed and/or denied Bell's appeals therefrom, on November 18, 1988 and May 2, 1989, respectively; and the motion and the cross-motion having regularly come on to be heard on July 15, 1997;

NOW, upon reading and filing Chase's Notice of Motion, dated June 27, 1997, the affidavit of Manuel W. Gottlieb sworn to on June 27, 1997, and the exhibits annexed to it, andthe reply affidavit of Manuel W. Gottlieb sworn to on July 14, 1997, all submitted in support of Chemical's motion, and upon reading and filing Bell's Notice of Cross-Motion To Vacate the Decisions of December 4 and 7, 1987, For Summary Judgment Against the Defendants, To Amend The Ad Damnum Clause, dated July 10, 1997, the Affidavit of John B. Bell in support of the Cross-Motion and the Relief Sought, sworn to on July 10,1997, and the Reply Affidavit of John B. Bell in Opposition To The Motion and in support of the Cross-Motion, sworn to on July 17, 1987, with exhibit, all submitted in opposition to Chemical's motion and in support of Bell's cross-motion; and after due deliberation having been had, and the court having issued its decision dated July 17, 1997, it is hereby

and ADJUDGED (handwritten)

ORDERED, /that Bell is enjoined from commencing or reinstituting any further litigation, in this Court, any appellate court in which orders of this Court are reviewable, any other state of federal court, or any other tribunal, state or federal, on any legal theory of recovery or factual basis, relating in any way or manner to Bell's student loan or loans from Chemical and/or the guarantee thereof by NYSHESC which were the subject matter of the litigation described in the first paragraph hereof, against Chemical, any successor, assign, parent, subsidiary, affiliate or agent of Chemical, or NYSHESC, any successor, assign, parent, subsidiary, affiliate or agent of NYSHESC, all such claims being res judicata and permanently barred; provided, that nothing contained herein shall bar Bell from a direct appeal from this Order to each appellate court, the Supreme Court, Appellate Division, First Department and the Court of Appeals, in which orders of this Court are reviewable, and it is further

ORDERED, that Bell's cross-motion for an order

vacating the decisions of December 4 and 7, 1987, for summary judgment against the defendants, and to amend the ad damnum clause, is denied.

ENTER:
ELLIOT WILK

/S/

NEW YORK
COUNTY CLERK'S OFFICE

OCT 01 1997

FILED